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Attorney for Plaintiff

E-filing

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

EMC

SAN FRANCISCO DIVISION

CV 08

2353

ELBERT HARRIS, III,

Plaintiff,

vs.

CITY AND COUNTY OF SAN
FRANCISCO, DEPARTMENT OF
PUBLIC HEALTH; ROBERT THOMAS,
Director of Human Resources, Laguna
Honda Hospital and Rehabilitation Center;
and LARRY BEVAN, Licensed
Psychiatric Technician, Laguna Honda
Hospital and Rehabilitation Center, and
DOES 1 through 25,

Defendants.

NO. _____

COMPLAINT FOR DECLARATORY
RELIEF, INJUNCTIVE RELIEF
RELIEF AND DAMAGES

DEMAND FOR JURY TRIAL

42 U.S.C. Section 1981

Plaintiff alleges:

I

FACTS COMMON TO ALL CAUSES OF ACTION

1. Plaintiff, ELBERT HARRIS, III, is an African American (Black) residing in the City and County of San Francisco, State of California.

2. Defendant, CITY AND COUNTY OF SAN FRANCISCO, is, and at all times relevant hereto, has been a political subdivision of the State of California. Said Defendant owns,

operates and maintains the LAGUNA HONDA HOSPITAL AND REHABILITATION CENTER, at San Francisco, California, operated by the Department of Public Health, an agency of said City and County. Defendant ROBERT THOMAS, is the Director of Human Resources, at said LAGUNA HONDA HOSPITAL AND REHABILITATION CENTER. Defendant, LARRY BEVAN, is a Licensed Psychiatric Technician, who has also been unlawfully allowed by said Defendants to act in a supervisory capacity at said LAGUNA HONDA HOSPITAL AND REHABILITATION CENTER.

3. Plaintiff is ignorant of the true names and capacities of Defendants sued herein a DOES 1 through 25, inclusive, and therefore sues these Defendants by such fictitious names. Plaintiff will amend the complaint to allege their true names and capacities when ascertained. Plaintiff is informed and believes, and therefore alleges that each of the fictitiously named Defendants is lawfully responsible in some manner for the occurrences herein alleged, and that Plaintiff's losses as herein alleged were proximately caused by such individual actions.

4. Plaintiff is informed and believes, and thereby alleges that each of the Defendants herein was at all times relevant hereto the agent, employee, or representative of the remaining Defendants and was acting within the scope and course of such relationship.

5. Plaintiff has been employed as a Certified Nursing Assistant at said LAGUNA HONDA HOSPITAL AND REHABILITATION CENTER since in or about December, 1984.

6. During the entire tenure of Plaintiff's said employment, he has always performed all of his assigned and related duties in an excellent fashion.

7. Notwithstanding., beginning in or about September, 2007, Plaintiff has been subjected to a continuing pattern of unlawful discriminatory employment practices, which have included, but have not been limited to:

a. Disciplinary action without cause or justification placing Plaintiff on unpaid administrative leave (suspension) in or about September, 2007;

b. Retaliation against Plaintiff because of his continuing protests of unlawful

1 discriminatory employment practices against him;

2 c. Harassment of Plaintiff;

3 d. Refusal to accept Plaintiff's complaints of unlawful discriminatory employment
4 practices against him;

5 e. Discrimination against Plaintiff in the terms and conditions of his employment; and

6 f. Unwarranted disciplinary action against Plaintiff placing him on unpaid administrative
7 leave (suspension) since March 19, 2008.

8 8. Said actions have been taken against Plaintiff on account of his race and color, and in
9 retaliation against him because of his continuing protests of unlawful discriminatory employment
10 practices against him.

11 II

12 FIRST CAUSE OF ACTION

13 AS TO ALL DEFENDANTS

14 42 U.S.C. Section 1981

15 As a first, separate and distinct cause of action, Plaintiff complains of Defendants, and
16 each of them, and for a cause of action alleges:

17 9. The allegations of paragraphs 1 through 8 above, are re-alleged and incorporated
18 herein by reference.

19 10. Jurisdiction of this Court is invoked pursuant to the provisions of 28 U.S.C. Section
20 1331 to enforce the provisions of 42 U.S.C. Section 1981 which provides as follows:

21 "(a) Statement of equal rights

22 All persons within the jurisdiction of the United States
23 shall have the same right in every State and Territory to
24 make and enforce contracts, to sue, be parties, give
25 evidence and to the full and equal benefit of all laws
26 and proceedings for the security of persons and property
27 as is enjoyed by white citizens, and shall be subject to like
28 punishment, pains, penalties, taxes, licenses, and
exactions of every kind, and to no other.

1 (b) "Make and enforce contracts" defined

2 For purposes of this section, the term "make and enforce
3 contracts" includes the making, performance, modification,
4 and termination of contracts, and the enjoyment of all
benefits, privileges, terms, and conditions of the contractual
relationship.

5 c) Protection against impairment

6 The rights protected by this section are protected against
7 impairment by nongovernmental discrimination and
impairment under color of State law."

8 11. Venue is proper in the Northern District of California.

9 12. Defendant has maintained a pattern and practice of unlawful discriminatory
10 employment practices against Plaintiff on account of his race and color by engaging in the
11 actions and conduct, among other things, as alleged in Paragraph 7 hereof in violation of the Fair
12 Employment and Housing Act, Government Code Section 12940a.

13 13. Plaintiff was subjected to the actions and conduct described in Paragraph 7 herein on
14 account of his race and color and in retaliation against him for his continuing complaints and
15 protests of said unlawful discriminatory employment practices in violation of the provisions of
16 42 U.S.C. Section 1981.

17 14. As a direct result of said acts and conduct of Defendants, as alleged herein, Plaintiff
18 has suffered loss of and continues to suffer substantial loss of earnings and related employment
19 benefits in an amount to be proven at trial herein.

20 15. In doing the acts and in engaging in the conduct herein alleged, Defendants intended
21 to and did vex, harass, annoy and cause Plaintiff to suffer and continue to suffer severe emotional
22 distress for which he has sought medical care.

23 16. On May 6, 2008, Plaintiff duly filed an administrative charge of discrimination
24 herein with the United States Equal Employment Opportunity Commission (EEOC). A true and
25 correct copy of said charge of discrimination is attached hereto as Exhibit 1. However, the U.S.
26 Department of Justice has not yet issued a Notice of Right to Sue thereon. Upon receipt of
27

1 same, Plaintiff will move this Court for leave to amend this within action to reflect his
2 exhaustion of administrative remedies relative hereto.

3 III

4 SECOND CAUSE OF ACTION

5 AS TO DEFENDANT CITY AND COUNTY OF SAN FRANCISCO

6 42 U.S.C. SECTION 2000e-2

7 As a second, separate and distinct cause of action, Plaintiff complains of Defendants, and
8 each of them, and for a cause of action, alleges:

9 17. The allegations of paragraphs 1 through 16 above, are re-alleged and incorporated
10 herein by reference.

11 18. Jurisdiction is invoked herein pursuant to the provisions of the Civil Rights Act of
12 1964, as amended, 42 U.S.C. Section 2000e(5)(3) to enforce the provisions of 42 U.S.C. Section
13 2000e-2(a), which provides that:

14 "It shall be an unlawful employment practice for an employer –

15 (1) to fail or refuse to hire or to discharge any individual, or
16 otherwise to discriminate against any individual with respect
17 to his compensation, terms, conditions, or privileges of employ-
ment because of such individual's race, color, religion, sex or
national origin; or

18 (2) to limit, segregate, or classify his employees or applicants
19 for employment in any way which would deprive or tend to
20 deprive any individual of employment opportunities or otherwise
adversely affect his status as an employee, because of such
individual's race, color, religion, sex or national origin.

21 19. Said defendant has engaged in the actions and conduct alleged in paragraph 8 hereof
22 on account of his race and color in violation of the provisions of 42 U.S.C. Section 2000e-2(a).

23 20. As a direct result of said acts and conduct of Defendants, as alleged herein, Plaintiff
24 has suffered loss of and continues to suffer substantial loss of earnings and related employment
25 benefits in an amount to be proven at trial herein.

26 21. In doing the acts and in engaging in the conduct herein alleged, Defendants intended
27

1 to and did vex, harass, annoy and cause Plaintiff to suffer and continue to suffer severe emotional
2 distress for which he has sought medical care.

3 22. On May 6, 2008, Plaintiff duly filed an administrative charge of discrimination
4 herein with the United States Equal Employment Opportunity Commission (EEOC). A true and
5 correct copy of said charge of discrimination is attached hereto as Exhibit 1. However, the U.S.
6 Department of Justice has not yet issued a Notice of Right to Sue thereon. Upon receipt of
7 same, Plaintiff will move this Court for leave to amend this within action to reflect his
8 exhaustion of administrative remedies relative hereto.

9 IV

10 THIRD CAUSE OF ACTION

11 AS TO ALL DEFENDANTS

12 42 U.S.C. 2000-3

13 As a third, separate and distinct cause of action, Plaintiff complains of Defendants, and
14 each of them, and for a cause of action, alleges:

15 23. The allegations of paragraphs 1 through 22 above, are re-alleged and incorporated
16 herein by reference.

17 24. Jurisdiction is invoked herein pursuant to the provisions of the Civil Rights Act of
18 1964, as amended, 42 U.S.C. Section 2000e-5(3) to enforce the provisions of 42 U.S.C. Section
19 2000e-3, which provides that:

20 "It shall be an unlawful employment practice for an employer
21 to discriminate against any of his employees or applicants for
22 employment, for an employment agency, or joint labor-management
23 committee controlling apprenticeship or other training or re-
24 training, including on the job training programs, to discriminate
25 against any individual, or for a labor organization to discriminate
26 against any member thereof or applicant for membership, because
27 he has opposed any practice made an unlawful employment practice
28 by this subchapter, or because he has made a charge, testified, assisted,
or participated in any manner in an investigation, proceeding, or
hearing under this subchapter."

25. Defendants have engaged in the action and conduct described in paragraph 7 herein

1 against Plaintiff because he has opposed and continues to oppose said unlawful discriminatory
2 employment practices prohibited by 42 U.S.C. Section 2000e-2, in violation of 42 U.S.C. Section
3 2000e-3.

4 26. As a direct result of said acts and conduct of Defendants, as alleged herein, Plaintiff
5 has suffered loss of and continues to suffer substantial loss of earnings and related employment
6 benefits in an amount to be proven at trial herein.

7 27. In doing the acts and in engaging in the conduct herein alleged, Defendants intended
8 to and did vex, harass, annoy and cause Plaintiff to suffer and continue to suffer severe emotional
9 distress for which he has sought medical care.

10 28. On May 6, 2008, Plaintiff duly filed an administrative charge of discrimination
11 herein with the United States Equal Employment Opportunity Commission (EEOC). A true and
12 correct copy of said charge of discrimination is attached hereto as Exhibit 1. However, the U.S.
13 Department of Justice has not yet issued a Notice of Right to Sue thereon. Upon receipt of
14 same, Plaintiff will move this Court for leave to amend this within action to reflect his
15 exhaustion of administrative remedies relative hereto.

16 V

17 FOURTH CAUSE OF ACTION

18 AS TO DEFENDANT CITY AND COUNTY OF SAN FRANCISCO

19 GOVERNMENT CODE SECTION 12940a

20 As a fourth, separate and distinct cause of action, Plaintiff complains of Defendants, and
21 each of them, and for a cause of action, alleges:

22 29. The allegations of paragraphs 1 through 28 above, are re-alleged and incorporated
23 herein by reference.

24 30. Jurisdiction herein is invoked pursuant to the provisions of Government Code
25 Section 12965, seeking a declaratory judgment, injunctive relief and damages for violations of
26 the Plaintiff's employment rights as protected by the Fair Employment and Housing Act (FEHA),
27

1 Government Code Section 12940a, which provides that it shall be unlawful for an employer to
2 discriminate against an employee, among other things, on account of race and color.

3 31. Plaintiff is an employee of African ancestry (Black) and is therefore a person
4 protected by said provisions of said Act.

5 32. Defendant has maintained a pattern and practice of unlawful discriminatory
6 employment practices against Plaintiff on account of his race and color by engaging in the
7 actions and conduct, among other things, as alleged in Paragraph 7 hereof in violation of the Fair
8 Employment and Housing Act, Government Code Section 12940a.

9 33. Defendant has taken the actions and conduct against Plaintiff as alleged herein on
10 account of his race and color in violation of the Fair Employment and Housing Act, Government
11 Code Section 12940a.

12 34. As a direct result of said actions and conduct of Defendant as alleged herein, Plaintiff
13 has suffered loss of and continues to suffer substantial loss of earnings and related employment
14 benefits in an amount to be proven at trial herein.

15 35. In doing the acts and in engaging in the conduct herein alleged, Defendants intended
16 to and did vex, harass, annoy and cause Plaintiff to suffer and continue to suffer severe emotional
17 distress.

18 36. On May 6, 2008, Plaintiff duly filed an administrative charge of discrimination
19 herein with the California Department of Fair Employment and Housing (DFEH). A true and
20 correct copy of said charge of discrimination is attached hereto as Exhibit 2. A notice of right to
21 sue was issued on May 6, 2008, authorizing Plaintiff to initiate a civil action in the California
22 Superior Court within one year of said date. A true and correct copy of said Notice of Right to
23 Sue is attached hereto as Exhibit 3. Plaintiff has exhausted all of his administrative remedies
24 herein, and this action has been timely filed.

25 VI

26 FIFTH CAUSE OF ACTION

1 AS TO DEFENDANT CITY AND COUNTY OF SAN FRANCISCO

2 GOVERNMENT CODE SECTION 12940a

3 As a fifth, separate and distinct cause of action, Plaintiff complains of Defendants, and
4 each of them, and for a cause of action, alleges:

5 37. The allegations of paragraphs 1 through 36 above, are re-alleged and incorporated
6 herein by reference.

7 38. Jurisdiction herein is invoked pursuant to the provisions of Government Code
8 Section 12965, seeking a declaratory judgment, injunctive relief and damages for violations of
9 the Plaintiff's employment rights as protected by the Fair Employment and Housing Act (FEHA),
10 Government Code Section 12940h, which provides that it shall be unlawful for an employer to
11 retaliate against an employee, because of said employee's protests of unlawful discriminatory
12 employment practices, or association with a person protesting alleged discriminatory
13 employment practices

14 39. Plaintiff is an employee of Defendant who protested violations of Government Code
15 Section 12940, *et seq.*, as alleged in paragraph 7 hereof.

16 40. Defendant has subjected Plaintiff to a pattern and practice of egregious retaliatory
17 actions and conduct, because of his complaints of said unlawful discriminatory employment
18 practices, which have included, but have not been limited to, the actions and conduct alleged,
19 among other things, in paragraph 7 hereof, as alleged herein, because of his continuing protests
20 of Defendant's continuing said unlawful discriminatory employment practices against him.

21 41. Defendant has taken such actions against Plaintiff in violation of Government Code
22 Section 12940h.

23 42. As a direct result of the acts and conduct of Defendant, as alleged herein, Plaintiff
24 has suffered loss of and continues to suffer substantial loss of earnings and related employment
25 benefits in an amount to be proven at trial herein.

26 43. In doing the acts and in engaging in the conduct herein alleged, Defendant intended
27

1 to and did vex, harass, annoy and cause Plaintiff to suffer and continue to suffer severe emotional
2 distress, for which he has sought medical care.

3 44. On May 6, 2008, Plaintiff duly filed an administrative charge of discrimination
4 herein with the California Department of Fair Employment and Housing (DFEH). A true and
5 correct copy of said charge of discrimination is attached hereto as Exhibit 2. A notice of right to
6 sue was issued on May 6, 2008, authorizing Plaintiff to initiate a civil action in the California
7 Superior Court within one year of said date. A true and correct copy of said Notice of Right to
8 Sue is attached hereto as Exhibit 3. Plaintiff has exhausted all of his administrative remedies
9 herein, and this action has been timely filed.

10 VII

11 SIXTH CAUSE OF ACTION

12 GOVERNMENT CODE SECTION 12900, *ET SEQ.*

13 HARASSMENT

14 As a sixth, separate and distinct cause of action, Plaintiff complains of Defendants, and
15 each of them, and for a cause of action, alleges:

16 45. Plaintiff hereby incorporates by reference paragraphs 1 through 44, as though set
17 forth here in full.

18 46. Jurisdiction herein is invoked pursuant to the provisions of Government Code
19 Section 12965, seeking a declaratory judgment, injunctive relief and damages for violations of
20 the Plaintiff's employment rights as protected by the Fair Employment and Housing Act (FEHA),
21 Government Code Section 12940j, which provides that it shall be unlawful for an employer to
22 harass an employee, because of said employee's race and color.

23 47. Plaintiff is an employee and is a person protected by said provisions of said Act.

24 48. Defendants have subjected Plaintiff to a continuous pattern of harassment in
25 engaging in the actions and conduct as alleged, among other things, in paragraph 7 hereof, in
26 violation of the Fair Employment and Housing Act, Government Code Section 12940j.

1 49. As a direct result of the acts and conduct of Defendants, as alleged herein, Plaintiff
2 has suffered loss of and continues to suffer substantial loss of earnings and related employment
3 benefits in an amount to be proven at trial herein.

4 50. In doing the acts and in engaging in the conduct herein alleged, Defendants intended
5 and did vex, harass, annoy and cause Plaintiff to suffer and continue to suffer severe emotional
6 distress for which he has sought medical care.

7 51. On May 6, 2008, Plaintiff duly filed an administrative charge of discrimination herein
8 with the California Department of Fair Employment and Housing (DFEH). A true and correct
9 copy of said charge of discrimination is attached hereto as Exhibit 2. A notice of right to sue was
10 issued on May 6, 2008, authorizing Plaintiff to initiate a civil action in the California Superior
11 Court within one year of said date. A true and correct copy of said Notice of Right to Sue is
12 attached hereto as Exhibit 3. Plaintiff has exhausted all of his administrative remedies herein,
13 and this action has been timely filed.

14 VIII

15 PRAYER FOR RELIEF

16 WHEREFORE, Plaintiff prays judgment against Defendant as follows:

17 (A) Grant Plaintiff a declaratory judgment that Defendants have violated Plaintiff's rights
18 as guaranteed by 42 U.S.C. Section 1981, 42 U.S.C. Section 2000e, *et seq.*, and California
19 Government Code Section 12940, *et seq.*, in committing the acts and in engaging in the conduct
20 complained of herein;

21 (B) Permanently enjoin Defendants, their agents, successors, and employees and those
22 acting in concert with them from engaging in each of the unlawful practices and policies
23 complained of herein;

24 C) Award Plaintiff damages for all earnings lost, including future earnings loss and for
25 loss of related employment benefits;

26 (D) Returning Plaintiff to his position of employment without loss of pay, seniority or
27

1 rank;

2 (E) Award Plaintiff damages for lost career and employment opportunities;

3 (F) Order that all negative material be removed from Plaintiff's personnel file or any
4 other files or records maintained in connection with Plaintiff's employment;

5 (G) Award Plaintiff damages for severe psychological harm in an amount to be proven at
6 trial;

7 (H) Award Plaintiff punitive damages in an amount commensurate with harm caused to
8 Plaintiff and Defendant's financial ability;

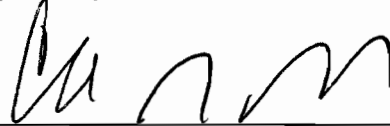
9 (I) Award Plaintiff costs of suit;

10 (J) Grant Plaintiff reasonable attorney's fees; and

11 (K) Grant Plaintiff such other and future relief as the Court may deem proper and just.

12 Dated: May 7, 2008

Respectfully submitted.

13
14 

15 CURTIS G. OLER
Attorney for Plaintiff

EXHIBIT 1

EXHIBIT 1

CHARGE OF DISCRIMINATION

This form is affected by the Privacy Act of 1974. See enclosed Privacy Act Statement and other information before completing this form.

Charge Presented To: Agency(ies) Charge No(s):

☐ FEPA

☒ EEOC

550-2008-01693

California Department Of Fair Employment & Housing

and EEOC

State or local Agency, if any

Name (indicate Mr., Ms., Mrs.)

Mr. Elbert Harris, III

Home Phone (Incl. Area Code)

(415) 468-7822

Date of Birth

Street Address

City, State and ZIP Code

330 Dwight Street, San Francisco, CA 94134

Named is the Employer, Labor Organization, Employment Agency, Apprenticeship Committee, or State or Local Government Agency That I Believe Discriminated Against Me or Others. (If more than two, list under PARTICULARS below.)

Name

LAGUNA HONDA HOSPITAL

No. Employees, Members

Unknown

Phone No. (Include Area Code)

(415) 759-2300

Street Address

City, State and ZIP Code

375 Laguna Honda Blvd., San Francisco, CA 94112

Name

No. Employees, Members

Phone No. (Include Area Code)

Street Address

City, State and ZIP Code

DISCRIMINATION BASED ON (Check appropriate box(es).)

☒ RACE ☒ COLOR ☐ SEX ☐ RELIGION ☐ NATIONAL ORIGIN
☒ RETALIATION ☐ AGE ☐ DISABILITY ☐ OTHER (Specify below.)

DATE(S) DISCRIMINATION TOOK PLACE
 Earliest Latest

05-06-2008

☒ CONTINUING ACTION

THE PARTICULARS ARE (If additional paper is needed, attach extra sheet(s)):

See attached.

I want this charge filed with both the EEOC and the State or local Agency, if any. I will advise the agencies if I change my address or phone number and I will cooperate fully with them in the processing of my charge in accordance with their procedures.

I declare under penalty of perjury that the above is true and correct.

05/06/2008

Date

SEE ATTACHED.

Charging Party Signature

NOTARY – When necessary for State and Local Agency Requirements

I swear or affirm that I have read the above charge and that it is true to the best of my knowledge, information and belief.
 SIGNATURE OF COMPLAINANT

SUBSCRIBED AND SWORN TO BEFORE ME THIS DATE
 (month, day, year)

DECLARATION OF ELBERT HARRIS, III

I, ELBERT HARRIS, III, declare:

1. I am an African American (Black) residing at 330 Dwight Street, San Francisco, California 94134. My telephone number is 415 - 468-7822.

2. I am a Certified Nursing Assistant (CNA) and have been employed by the City and County of San Francisco, Laguna Honda Hospital and Rehabilitation Center, 375 Laguna Honda Boulevard, San Francisco, California telephone 415 759-2300 since on or about December 12, 1984.

3. During my entire tenure as such, I have always performed my assigned and related duties in an excellent manner.

4. Notwithstanding, beginning in or about September, 2007, I have been subjected to a continuing pattern or unlawful discriminatory employment practices in my said employment which have included, but have not been limited to, disciplinary actions against me without cause or justification by placing me on unpaid administrative leave, harassment, and retaliation against me for my continuing protests of such unlawful discriminatory employment practices against.

5. Said actions have been taken against me by Robert Thomas, Director of Human Resources, and instigated by Larry Bevan, Licensed Psychiatric Technician (LPT), who has been unlawfully allowed by my employer to act as supervisor.

6. I have remained on unpaid administrative leave since March 19, 2008, with substantial loss of income and related benefits.

7. Said actions have been taken against me in violation of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000e, *et seq.*

I have personal knowledge of the above facts, and if called upon to testify, I could and would testify competently thereto. I declare under penalty of perjury that the foregoing is true and correct and that I executed this Declaration on May 5, 2008, at San Francisco, California.


ELBERT HARRIS, III

EXHIBIT 2

EXHIBIT 2

CHARGE OF DISCRIMINATION

This form is affected by the Privacy Act of 1974. See enclosed Privacy Act Statement and other information before completing this form.

Charge Presented To:

Agency(ies) Charge No(s):

☐ FEPA☒ EEOC**550-2008-01693****California Department Of Fair Employment & Housing**

and EEOC

State or local Agency, if any

Name (Indicate Mr., Ms., Mrs.)

Mr. Elbert Harris, III

Home Phone (Incl. Area Code)

(415) 468-7822

Date of Birth

Street Address

City, State and ZIP Code

330 Dwight Street, San Francisco, CA 94134

Named is the Employer, Labor Organization, Employment Agency, Apprenticeship Committee, or State or Local Government Agency That I Believe Discriminated Against Me or Others. (If more than two, list under PARTICULARS below.)

Name

LAGUNA HONDA HOSPITAL

No. Employees, Members

Unknown

Phone No. (Include Area Code)

(415) 759-2300

Street Address

City, State and ZIP Code

375 Laguna Honda Blvd., San Francisco, CA 94112

Name

No. Employees, Members

Phone No. (Include Area Code)

Street Address

City, State and ZIP Code

DISCRIMINATION BASED ON (Check appropriate box(es).)

☒ RACE ☒ COLOR ☐ SEX ☐ RELIGION ☐ NATIONAL ORIGIN
☒ RETALIATION ☐ AGE ☐ DISABILITY ☐ OTHER (Specify below.)

DATE(S) DISCRIMINATION TOOK PLACE

Earliest

Latest

05-06-2008☒ CONTINUING ACTION

THE PARTICULARS ARE (If additional paper is needed, attach extra sheet(s)):

See attached.

I want this charge filed with both the EEOC and the State or local Agency, if any. I will advise the agencies if I change my address or phone number and I will cooperate fully with them in the processing of my charge in accordance with their procedures.

I declare under penalty of perjury that the above is true and correct.

05/06/2008

Date

SEE ATTACHED.

Charging Party Signature

NOTARY - When necessary for State and Local Agency Requirements

I swear or affirm that I have read the above charge and that it is true to the best of my knowledge, information and belief.

SIGNATURE OF COMPLAINANT

SUBSCRIBED AND SWORN TO BEFORE ME THIS DATE
(month, day, year)

DECLARATION OF ELBERT HARRIS, III

I, ELBERT HARRIS, III, declare:

1. I am an African American (Black) residing at 330 Dwight Street, San Francisco, California 94134. My telephone number is 415 - 468-7822.

2. I am a Certified Nursing Assistant (CNA) and have been employed by the City and County of San Francisco, Laguna Honda Hospital and Rehabilitation Center, 375 Laguna Honda Boulevard, San Francisco, California telephone 415 759-2300 since on or about December 12, 1984.

3. During my entire tenure as such, I have always performed my assigned and related duties in an excellent manner.

4. Notwithstanding, beginning in or about September, 2007, I have been subjected to a continuing pattern or unlawful discriminatory employment practices in my said employment which have included, but have not been limited to, disciplinary actions against me without cause or justification by placing me on unpaid administrative leave, harassment, and retaliation against me for my continuing protests of such unlawful discriminatory employment practices against.

5. Said actions have been taken against me by Robert Thomas, Director of Human Resources, and instigated by Larry Bevan, Licensed Psychiatric Technician (LPT), who has been unlawfully allowed by my employer to act as supervisor.

6. I have remained on unpaid administrative leave since March 19, 2008, with substantial loss of income and related benefits.

7. Said actions have been taken against me in violation of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000e, *et seq.*

I have personal knowledge of the above facts, and if called upon to testify, I could and would testify competently thereto. I declare under penalty of perjury that the foregoing is true and correct and that I executed this Declaration on May 5, 2008, at San Francisco, California.


ELBERT HARRIS, III

EXHIBIT 3

EXHIBIT 3

DEPARTMENT OF FAIR EMPLOYMENT & HOUSING

EE ADDRESS CHECKED BELOW)

(800) 700-2320

Date: May 6, 2008

☐ H 4800 Stockdale Hwy., Suite 215
Bakersfield, CA 93309
(661) 395-2729

Case Name: Elbert Harris vs. Laguna Honda Hospital (City & County of San Francisco)
☐ C 1320 E. Shaw Avenue, Suite 150
Fresno, CA 93710
(559) 244-4760

EEOC No: 550-2008-01693

NOTICE TO COMPLAINANT AND RESPONDENT

☐ S/T 611 West Sixth Street, Suite 1500
Los Angeles, CA 90017
(213) 439-6799

This is to advise you that the above-referenced complaint is being referred to the California Department of Fair Employment and Housing (DFEH) by the U.S. Equal Employment Opportunity Commission (EEOC). The complaint will be filed in accordance with California Government Code section 12960. This notice constitutes service pursuant to Government Code section 12962.

☐ M 1515 Clay Street, Suite 701
Oakland, CA 94612
(510) 622-2941

No response to the DFEH is required by the respondent.

☐ E 2000 "O" Street, Suite 120
Sacramento, CA 95814
(916) 445-5523

The EEOC will be responsible for the processing of this complaint. DFEH will not be conducting an investigation into this matter. EEOC should be contacted directly for any discussion of the charge. DFEH is closing its case on the basis of "processing waived to another agency."

☐ D 1350 Front Street, Suite 3005
San Diego, CA 92101
(619) 645-2681

NOTICE TO COMPLAINANT OF RIGHT-TO-SUE

☒ A San Francisco District Office
1515 Clay Street, Suite 701
Oakland, CA 94612
(510) 622-2973

Since DFEH will not be issuing an accusation, this letter is also your right-to-sue notice. According to Government Code section 12965, subdivision (b), you may bring a civil action under the provisions of the Fair Employment and Housing Act against the person, employer, labor organization or employment agency named in the above-referenced complaint. The lawsuit may be filed in a State of California Superior or Justice Court. Government Code section 12965, subdivision (b), provides that such a civil action must be brought within one year from the date of this notice. Pursuant to Government Code section 12965, subdivision (d)(1), this one-year period will be tolled during the pendency of the EEOC's investigation of your complaint. You should consult an attorney to determine with accuracy the date by which a civil action must be filed. This right to file a civil action may be waived in the event a settlement agreement is signed. Questions about the right to file under federal law should be referred to the EEOC.

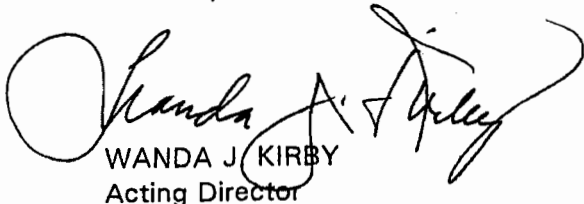
☐ G 2570 North First Street, Suite 480
San Jose, CA 95131
(408) 325-0344

☐ K 2101 East Fourth Street, Suite 255-B
Santa Ana, CA 92705
(714) 558-4266

The DFEH does not retain case records beyond three years after a complaint is filed.

Remember: This Right-To-Sue Notice allows you to file a private lawsuit in State court.

Sincerely,


WANDA J. KIRBY
Acting Director

DFEH-200-02 (11/07)

1 VERIFICATION

2 I, ELBERT HARRIS, III, declare:

3 I have read the foregoing Complaint and know the contents thereof. The same is true of
4 my own knowledge, except for those matters stated therein on information and belief, and as to
5 those, I believe them to be true.

6 I declare under penalty of perjury under the laws of the State of California that the
7 foregoing is true and correct and that this Verification was executed on May 7, 2008, at San
8 Francisco, California.

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11 ELBERT HARRIS, III

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28 Verification

AO 440 (Rev. 03/08) Civil Summons

UNITED STATES DISTRICT COURT

E-filing

for the

Northern District of California

ELBERT HARRIS, III

Plaintiff

v.

CITY AND COUNTY OF SAN FRANCISCO

Defendant

see attachment

Civil Action No.

CV 08

Summons in a Civil Action

2353
EMC

To:

(Defendant's name)

A lawsuit has been filed against you.

Within 20 days after service of this summons on you (not counting the day you received it), you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff's attorney, whose name and address are:

Curtis G. Oler (Bar No. 63689)
P. O. Box 15083
San Francisco, California 94115
Telephone: 415 - 346-8015
Telehone: 415 - 346-8238

If you fail to do so, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

Richard W. Wieking

Name of clerk of court

Date:

MAY 7 2008

Deputy clerk's signature

MARY ANN BUCKLEY

(Use 60 days if the defendant is the United States or a United States agency, or is an officer or employee of the United States allowed 60 days by Rule 12(a)(3).)

DEPARTMENT OF PUBLIC HEALTH;)
ROBERT THOMAS, Director of)
Human Resources, Laguna Honda)
Hospital and Rehabilitation Center;)
and LARRY BEVAN, Licensed)
Psychiatric Technician, Laguna Honda)
Hospital and Rehabilitation Center, and)
DOES 1 through 25,)

Defendants.